

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: RICHARD H. YOUNG - Respondent Attorney

Arkansas Bar ID # 94149

CPC Docket No. 2004-089

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Richard H. Young practicing primarily in Russellville and Fayetteville, Washington and Pope Counties, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Judicial Officer, the Honorable Richard D. Taylor.

Respondent was served with a formal complaint on July 1, 2004, supported by the grievance from Judge Taylor. A response was filed July 20, 2004.

The information before the Committee reflected that on January 8, 2003, Mr. Young entered an appearance on behalf of debtor Ricardo A. Ramirez and on January 27, 2003, Mr. Young filed the bankruptcy petition and schedules. The bankruptcy court entered an order of deficiency on February 10, 2003. However, on February 13, 2003, Mr. Young filed more deficient schedules. The creditors' meeting was scheduled for February 13, 2003, but neither Mr. Young nor his client appeared and the meeting was continued to April 3, 2003. Mr. Young filed amended schedules on March 28, 2003, however, they lacked the requisite signatures. On April 3, 2003, the debtor appeared for the creditors' meeting however, Mr. Young did not. The Trustee filed a motion to disgorge fees on the case and though Mr. Young failed to appear at the hearing, the court found the fees Mr. Young received in the case were excessive and the Court ordered Mr. Young to refund \$750 within 15 days of the entry of the Order. Mr. Young failed to comply with the Court's Order to refund fees and on June 27, 2003, the Trustee filed a motion for a judgment against Mr. Young. The Court entered a judgment against Mr. Young in the amount of \$750 on June 30, 2003. On August 6, 2003, the Court entered an Order to Show Cause and for Mr. Young appear in Court on September 9, 2003, to explain his failure to refund the \$750

to the client. Mr. Young failed to appear at the hearing and the Court entered an Order on September 18, 2003, fining Mr. Young \$1,000 and said the sum would double for every month the fine and fees remained unpaid. The Court scheduled another show cause hearing for October 7, 2003, however, once again, Mr. Young failed to appear. The Court found Mr. Young in contempt and fined him an additional \$1,000. The Order set out that Mr. Young was to pay the \$2,000 fine to Jean Rolfs, U.S. Bankruptcy Clerk, and \$750 was to be refunded to the client before October 20, 2003. The \$750 was to be made out to the debtor but sent to the U.S. Trustee's office. On November 4, 2003, another hearing was held but Mr. Young, once again, failed to appear. An Order was entered extending Mr. Young's due date to December 31, 2003. On November 28, 2003, the U.S. Trustee received a check from the Bankruptcy Clerk in Fayetteville in the amount of \$750 for the debtor but in the name of the U.S. Trustee. However, the check failed to clear the bank and on December 17, 2003, an assistant from Mr. Young's office called the clerk and asked them to run the check through again. On December 30, 2003, Mr. Young filed a Petition for Extension of Time to pay the \$2,000 fine. The Court granted the Petition and extended the due date to February 27, 2004.

On January 9, 2004, an assistant from Mr. Young's office notified the Bankruptcy Clerk that Mr. Young would bring \$795 in cash to the Fayetteville Clerk's office on Monday, January 12, 2004, to cover the \$750 check which did not clear the bank and the resulting fee. However, Mr. Young did not go by the Clerk's office as he said he would.. On January 22, 2004, an Order was entered for Mr. Young to appear and show cause on February 10, 2004. Mr. Young appeared at the February 10th hearing and represented to the Court several times that he had previously paid the \$750 plus the insufficient funds fee. The Court found no evidence of payment and set a hearing date of March 9, 2004, for Mr. Young to show cause why sanctions should not be imposed. On February 12, 2004, the U.S. Trustee received a letter from the Bankruptcy Trustee forwarding a check in the amount of \$2,000 dated February 10, 2004, from Mr. Young payable to the U.S. Trustee. In both instances Mr. Young sent the checks to the wrong parties, payable to the wrong parties. A hearing was held March 9, 2004, however, it was discovered that Mr. Young had not received proper notice and therefore another Show Cause hearing was set for March 31, 2004. On March 25, 2004, the Clerk received a payment of \$2,000 from Mr. Young and \$795 for the debtor plus the returned check fee.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Young's conduct violated Model Rule 1.1 when he prepared and filed defective bankruptcy pleadings on behalf of his client on January 27, 2003, February 13, 2003, and March 28, 2003. Model Rule 1.1 requires that a lawyer provide competent representation to a client which requires the legal knowledge skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Young's conduct violated Model Rule 1.3 when he failed to refund the fees to his client and then failed to timely pay the fines. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Young's conduct violated Model Rule 4.1(a) when he told the judge several times during the hearing on February 10, 2004, that he had refunded the \$750 to the client and had paid the \$45 returned check fee when in fact he had not. Model Rule 4.1(a) requires that in the course of representing a client, a lawyer shall not knowingly make a false statement or material fact of law to a third person.

4. That Mr. Young's conduct violated Model Rule 8.4(c) when he lied to the Judge during the February 10, 2004, hearing in no less than eleven instances regarding the repayment of the \$750 fee to his client. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

5. That Mr. Young's conduct violated Model Rule 8.4(d) when he continuously missed hearings at which he was ordered to appear and show cause, disobeyed the orders of the court to refund the fee and pay the fines, lied to the court and repeatedly filed defective pleadings with the court. Model Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Young and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that Respondent, Richard H. Young, Arkansas Bar No. 94149, be, and hereby is, SUSPENDED for five (5) months retroactive to March 31, 2004, Ordered to take six (6) additional CLE hours as a reinstatement condition and pay \$50 in costs for his conduct in this matter.

The costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By _____

J. Michael Cogbill, Chairperson

Date _____